

TITLE 109 - NEBRASKA ENERGY OFFICE

CHAPTER 1 - RULES AND REGULATIONS FOR DEBARMENT OF PARTICIPANTS IN THE
ENERGY EFFICIENCY SCHOOL LOAN AND GRANT PROGRAMS

001 DEFINITIONS

001.01 Adequate Evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

001.02 Affiliates. Persons are affiliates if, directly or indirectly, either one controls or can control the other or a third controls or can control both.

001.03 Agency means the Nebraska Energy Office.

001.04 Day means calendar day.

001.05 Debarment means the action taken by the Agency to exclude a Participant from the School Programs for a specified period of time.

001.06 Initiating Official means an employee designated by the Director of the Energy Office to make a first assessment of facts that may constitute a cause for debarment.

001.07 Notice means notification in writing sent by registered or certified mail, return receipt requested, to the last known address of the addressee.

001.08 Participant means a person or an officer or employee of a person who directly or indirectly participates, may participate, or has participated in Energy Office school programs through an agreement of that person with a recipient or contractor of any tier.

001.09 Party is a participant or affiliate who has been provided notice of proposed debarment.

001.10 Person means an individual, corporation, partnership, unincorporated association or other public or private entity.

001.11 Recipient means any Nebraska public school district to whom the Agency extends a grant or loan under the school programs.

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001 DEFINITIONS (Continued)

001.12 School Programs means the grant and loan programs authorized by Sections 81-1632 through 81-1634 of Nebraska statute, administered by the Energy Office. The regulations for the grant program are in Title 106 of the Nebraska Administrative Rules and Regulations; the regulations for the loan program are in Title 108 of the Nebraska Administrative Rules and Regulations.

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002 PURPOSE

002.01 Purpose of Debarment Rule: The purpose of this rule establishing grounds and procedures for debarment of participants of school programs is to safeguard the public interest and to protect the financial integrity of the programs administered by the Energy Office under Sections 81-1632 through 81-1634 of the Nebraska Statutes. It is essential to the mission of the Energy Office that Severance Tax Funds are used properly by the public school districts who are recipients of loans and grants and by program participants to whom school districts contract to accomplish energy efficiency improvements with these funds. Debarment is not a form of punishment. It shall be imposed only for the causes stated and only for the minimum duration necessary to protect the state's interest.

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003 CAUSE FOR DEBARMENT

003.01 Any participant or affiliate may be debarred upon adequate evidence for any of the following causes:

003.01A Commission of fraud or conviction of any criminal offense as an incident to obtaining, seeking to obtain, or performing a contract funded in whole or part by Agency financial assistance under the School Programs.

003.01B Commission or omission of an act of a nature so serious that it indicates a lack of business integrity. Such commissions or omissions include but are not limited to:

003.01B1 The violation of any applicable law, regulation or contractual duty relating to the performance or obligations incurred pursuant to an agreement with a Recipient of Agency financial assistance under the School Programs,

003.01B2 Making or causing to be made any false statement or using deceit for the purpose of influencing in any way any action by the Recipient School District or the Agency,

003.01B3 Violation of any agreement with the Agency for a voluntary exclusion from participation in a school loan program,

003.01B4 An outstanding indictment for or a plea of nolo contendere to a criminal offense indicating a lack of business integrity or business honesty that seriously and directly affects the question of present responsibility,

003.01B5 A substantial and serious failure to perform or a record of unsatisfactory performance in accordance with the terms of one or more agreements with a Recipient of Agency financial assistance occurring within a period of five years preceding the determination to debar, and

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003 CAUSE FOR DEBARMENT (Continued)

003.01B6 Disqualification from participation in direct or indirect contracting by any Nebraska state agency.

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004 TERMS OF DEBARMENT

004.01 Debarment of Affiliates. Debarment may include any Affiliate of a Participant. A determination to include an Affiliate shall be made on a case-by-case basis. Among the factors to be considered are the Affiliate's knowledge of and participation in the conduct which is the basis for the debarment.

004.01A Notice and Procedures. An Affiliate shall be afforded the same rights to notice and hearing as the Participant.

004.02 Decision to Debar. Among the factors to be considered in determining the seriousness of an offense or the failure or inadequacy of performance is whether the person knew he or she was in violation of the applicable statutes, regulations, or contract provisions.

004.03 Time Limitations on Decisions to Debar. The notice of a proposed debarment shall be given within one year of:

004.03A a criminal conviction; or

004.03B completion of an investigation which is a basis for the debarment action; or

004.03C discovery of the cause on which the debarment action is based, whichever comes last.

004.04 Period of Debarment. The following periods of debarment may be imposed at the discretion of the Initiating Official:

004.04A Up to two years for a first debarment action;

004.04B Up to six years for a second debarment action for the same cause; or

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004 TERMS OF DEBARMENT (Continued)

004.04C When the debarment is based on debarment by another Nebraska state agency, a period not to exceed the remainder of the original debarment period.

004.05 Voluntary Exclusion. When in the best interests of the state, and provided that allegations of fraud or criminal activity are not involved, an Initiating Official instead of taking administrative action, may enter into an agreement with a Participant or an Affiliate providing for voluntary exclusion from the school programs for a specified period of time. Agreements for voluntary exclusion are entered into for the benefit of both parties and do not constitute administrative suspension or debarment measures. However, violation of an agreement for voluntary exclusion may result in administrative action to debar.

004.05A Separate Listing. The name of the person entering into an agreement under this subsection shall be included on the School Programs Exclusion List under a separate heading entitled "Voluntary Exclusions."

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005 PROCEDURES FOR DEBARMENT

005.01 Initiation of Debarment. Anyone may contact the Chief of the Finance Division or other Initiating Official of the Agency concerning the existence of a cause under Section 003. An Initiating Official shall review the matter and may also refer it to the Nebraska Attorney General. If after his or her review, the Initiating Official reasonably believes that a cause exists under Section 003, he or she may proceed according to the following procedures.

005.02 Notice of Proposed Debarment. When a debarment is proposed, the Initiating Official shall give notice to the Participant stating:

005.02A the specific acts or omissions which form the basis of the action;

005.02B that the party may, on request, obtain a hearing;

005.02C that the party may be represented by counsel; and

005.02D the period of proposed debarment, and that the debarment is effective when the final determination is issued, if no hearing is requested and the time to request a hearing has expired, or when the debarment order is issued by the hearing officer.

005.03 Amendment of Notice. The matters of fact and law alleged in a notice may be amended by the Initiating Official at any stage of the proceedings.

005.04 Hearing

005.04A Request for a Hearing. A request for a hearing shall be filed with the Initiating Official within twenty-one days of receipt of the notice of proposed debarment. If no request is timely filed, the opportunity to be heard is waived and the Initiating Official shall make a final determination and provide notice to the participant.

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005 PROCEDURES FOR DEBARMENT (Continued)

005.04B Hearing Before Hearing Officer. On timely request for a hearing, the Director of Agency shall appoint a Hearing Officer to conduct debarment hearings.

005.04B1 Where the proposed action is not based solely upon a conviction and evidence in support thereof, the person shall be afforded at his option an oral hearing before a hearing officer, or the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer, or both.

005.04B2 Where the proposed action is based solely upon a conviction and evidence in support thereof, the person shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

005.04C Oral Hearing. The hearing officer shall:

005.04C1 Arrange as prompt a hearing as is practicable within sixty days of the request for the hearing;

005.04C2 Determine the location of the hearing place considering the convenience of the parties and the public interest;

005.04C3 Provide at least ten days notice of the time and place of the hearing to all parties, to include a statement indicating the nature of the proceedings and their purpose;

005.04C4 Permit, at his or her discretion, any member of the public having an interest in the matter being heard to participate in the hearing at his or her own expense. Such participation shall be limited to the following:

005.04C4a Receiving advance notice of hearings;

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005 PROCEDURES FOR DEBARMENT (Continued)

005.04C4b Filing written briefs on the issues presented; and

005.04C4c Testifying when requested by the hearing officer.

005.04C5 Require Agency witnesses, if any, to be called first and to be questioned by the person against whom debarment is proposed. The person against whom debarment is proposed may be questioned by any party; and

005.04C6 Make a record of the proceeding and make a transcription of the record available to a party at the expense of the requesting party.

005.04D Determination. The hearing office may debar if the Agency has established the existence of a cause by a preponderance of the evidence and the debarment is consistent with these regulations.

005.04E Distribution. Within sixty days of the hearing, the hearing officer shall provide notice of his or her determination to all parties.

005.05 Review by Director. A person debarred may, within fifteen days after receipt of the notice of the determination, file a request for review by the Director of the Agency. If the Director, in his or her discretion, denies the request for review, the determination of the hearing officer or Initiating Official shall be final. Where a review is granted, the determination by the Director shall be final. The Director's determination shall be made within sixty days of the date the Director receives the request for review. The Director's determination shall recite the grounds upon which it is made. Notice of the decision shall be sent to all parties.

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